

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MELVIN DERELL BALDWIN-GREEN,

Petitioner,

v.

PATRICK COVELLO, ACTING
WARDEN,

Respondent.

No. 2:20-cv-1329 JAM DB P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Before this court are respondent's motion to dismiss this action and petitioner's motion to amend his first amended petition ("FAP") along with his simultaneously-filed second amended petition ("SAP"). For the reasons stated below, the court shall grant petitioner's motion to amend the FAP and deny respondent's motion to dismiss this action as moot. Respondent will also be directed to respond to petitioner's SAP.

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I. RELEVANT PROCEDURAL HISTORY

On August 4, 2020, the court directed respondent to file a response to petitioner's FAP. (ECF No. 7). Thereafter, on October 2, 2020, respondent filed the instant motion to dismiss the FAP on the ground that Claim Four in it is unexhausted. (See generally ECF No. 10).

On November 25, 2020, petitioner filed a motion to amend the FAP as well as a SAP. (ECF Nos. 14, 15). Petitioner contends that the motion to amend should be granted because he mistakenly included the unexhausted Claim Four in the FAP. (See ECF No. 14 at 2). However, petitioner states, the simultaneously-filed SAP does not contain Ground Four. (See generally ECF No. 15). Respondent has not filed objections to petitioner's motion to amend.

II. DISCUSSION

Given that petitioner has remedied the exhaustion deficiency in the FAP by filing the SAP, it appears that petitioner may be entitled to relief if the claimed violations of constitutional right that are alleged are proven. Thus, justice requires that petitioner's motion to amend the FAP be granted. See Fed. R. Civ. P. 15(a)(2). Consequently, respondent's motion to dismiss this action shall be denied as moot, and respondent shall be directed to file a response to the SAP.

Accordingly, IT IS HEREBY ORDERED that:

1. Petitioner's motion to amend the first amended petition (ECF No. 14) is GRANTED,
2. Within fourteen days of the date this order, respondent shall file a response to petitioner's second amended petition, filed November 25, 2020 (see ECF No. 15); see generally Fed. R. Civ. P. 15(a)(3), and
3. Respondent's motion to dismiss (ECF No. 10) is DENIED as moot.

Dated: December 9, 2020


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE